

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GREGORY WEST ENTSMINGER,

Plaintiff,

v.

ROMEO ARANAS, *et al.*,

Defendants.

Case No. 3:16-cv-00555-MMD-VPC

ORDER

Plaintiff Gregory West Entsminger, who is in custody at the Northern Nevada Correctional Center, filed this civil rights action under 42 U.S.C. § 1983 and state law. Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (ECF No. 195) (“R&R”), recommending denial of Plaintiff’s Motion to Include the State of Nevada as a Named Defendant (the “Motion”) (ECF No. 174) and dismissal of Count VIII of the Second Amended Complaint (ECF No. 18). Plaintiff filed an objection to the R&R.¹ (ECF No. 200.) As discussed further below, the Court agrees with Judge Cobb’s reasoning and adopts the R&R in full.

The Court incorporates the facts outlined in the R&R (ECF No. 195 at 1-2) and does not recite them here.

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a *de novo* determination of those portions of the [report and

¹The Court has also reviewed Defendants’ response (ECF No. 201).

1 recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party fails
2 to object, however, the court is not required to conduct “any review at all . . . of any issue
3 that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also*
4 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
5 of review employed by the district court when reviewing a report and recommendation to
6 which no objections were made); Fed. R. Civ. P. 72, Advisory Committee Notes (1983)
7 (providing that the court “need only satisfy itself that there is no clear error on the face of
8 the record in order to accept the recommendation”).

9 In light of Plaintiff’s objection to the R&R, this Court has engaged in a *de novo*
10 review to determine whether to adopt the R&R. Judge Cobb recommended that the Court
11 not add the State of Nevada ex rel. NDOC (the “State”) as a defendant in this case and
12 dismiss Plaintiff’s state law claims in Count VIII of the SAC, which Plaintiff brought under
13 supplemental jurisdiction. (ECF No. 195 at 2.) As Judge Cobb reasoned, Plaintiff cannot
14 sue the State in this non-removed action under § 1983 because the State has not waived
15 its Eleventh Amendment immunity. (*Id.* at 3 (citing to *O’Connor v. State of Nev.*, 686 F.2d
16 749, 750 (9th Cir. 1982)) Furthermore, the Court cannot exercise supplemental jurisdiction
17 over the state law tort claims because it does not have jurisdiction over the indispensable
18 party—here the State (see NRS §§ 41.031, 41.0337). (*Id.* at 2-3.) *See Hirst v. Gertzen*,
19 676 F.2d 1252, 1264 (9th Cir. 1982) (holding that federal court had no supplemental
20 jurisdiction over state tort claim where it had no jurisdiction over the state as an
21 indispensable party). The Court agrees with Judge Cobb and now addresses Plaintiff’s
22 objections.

23 Plaintiff argues that he can still sue the State for injunctive and declaratory relief
24 (ECF No. 200 at 2), but the U.S. Supreme Court has said that sovereign immunity applies
25 “regardless of the nature of the relief sought.” *Pennhurst State Sch. & Hosp. v. Halderman*,
26 465 U.S. 89, 100 (1984). Plaintiff also argues that Nevada state courts have outlined how
27 to structure a lawsuit so as to invoke waiver of sovereign immunity, which Plaintiff claims
28 he has done. (ECF No. 200 at 2-3.) However, Plaintiff cites to *Craig v. Donnelly*, 135 Nev.

1 37, 41 (Nev. App. 2019), which discussed how to properly bring claims in state court—not
2 federal court. The Ninth Circuit has already said that the State cannot be sued in federal
3 court without its consent because the State “has explicitly refused to waive its [sovereign]
4 immunity.” *O'Connor*, 686 F.2d at 750. In sum, the Court overrules Plaintiff’s objections.

5 The Court notes that Plaintiff made several arguments and cited to several cases
6 not discussed above. The Court has reviewed these arguments and cases and determines
7 that they do not warrant discussion as they do not affect the outcome of the objection
8 before the Court.

9 It is therefore ordered that the Report and Recommendation of Magistrate Judge
10 William G. Cobb (ECF No. 195) is accepted and adopted in its entirety.

11 It is further ordered that Plaintiff’s Motion to Include the State of Nevada as a
12 Named Defendant (ECF No. 174) is denied.

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14 DATED THIS 11th day of June 2020.

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18 MIRANDA M. DU
19 CHIEF UNITED STATES DISTRICT JUDGE
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